

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

*PATENT*

Inventor:	Stephens, <i>et al.</i>	Docket No.:	10079.0100
Serial No.:	09/504,939	Examiner:	Daniel S. Felten
Filing Date:	February 16, 2000	Art Unit:	3696
TITLE:	SYSTEM AND METHOD FOR CREATING, DISTRIBUTING AND MANAGING ARTIFICIAL AGENTS		

**RESPONSE TO NOTIFICATION ON NON-COMPLIANT BRIEF**

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Commissioner:

This submission is made in response to the Notification of Non-Compliant Amendment mailed August 31, 2009.

**Remarks** begin on page 2 of this paper.

### REMARKS

An Appeal Brief under 37 C.F.R. § 41.37 appealing the final decision of the primary examiner dated February 25, 2008 was originally submitted on February 25, 2009. A notice of Non-Compliant Appeal Brief was mailed on May 22, 2009 indicating that the brief is not in compliance with 37 C.F.R. § 41.37(c)(1)(v). A corrected brief was submitted on June 2, 2009. A second notice of Non-Compliant Appeal Brief was subsequently mailed on August 31, 2009 once again indicating the brief was not in compliance with 37 C.F.R. § 41.37(c)(1)(v). This paper is submitted in response to the Notice of Non-Compliant Amendment dated August 31, 2009 and on instruction from Supervisor Thomas Dixon following a telephone discussion regarding the appropriateness of the non-compliance.

#### Basis of Non-Compliance

The Notice of Non-Compliant Appeal Brief asserts that “[n]o drawing reference characters accompany the drawings as required under 37 C.F.R. 41.37(c)(1)(v).” In response the appellant submits that the previously submitted replacement sheets fulfilled the requirements to properly reference the drawing reference characters.

37 C.F.R. § 41.37(c)(1)(v) states that the explanation of the subject matter “shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.” As stated in the appellant’s reply of June 2, 2009, each figure listed in the Summary of Claimed Subject Matter is either a block diagram with the claimed element clearly displayed **or** the figure does not contain a reference character which can be referenced. For example, the description for independent claim 24 recites:

[A] consulting system [page 6, lines 2-3] which comprises a means for distributing artificial agents [page 5, lines 10-13 and lines 18-20; page 6, lines 20-25; page 39, lines 11-28; and page 40, lines 1-12] and an agent factory [page 16, lines 4-5; page 22, lines 22-25; page 23, lines 1-28; page 24, lines 1-5; and **Figure 1, item 115**] that monitors recommendations provided by a first artificial agent [page 16, lines 23-27] and comprises a management system [page 16, lines 11-12; and **Figure 1, item 125**]

having a graphical user interface configured to display the recommendations [page 16, lines 11-12; **Figure 1, item 130; and Figs. 5-11**] and determine whether the first artificial agent is performing below a predetermined predictability value [page 26, lines 15-28; page 27, lines 1-25; and **Figure 4**] and when the first artificial agent is below the predetermined predictability value, the first artificial agent is retired [page 41, lines 7-10 and lines 26-30; and **Figure 13, item 1330**] and a second artificial agent is made available for distribution [page 39, lines 3-7].

Clearly, in the case of Figures 1 and 13 the reference characters are provided. However, in the case of Figure 4 for example, the figure does not contain any reference characters. It is therefore impossible for the appellant to reference something that does not exist.

The appellant submits that the examiner may be misinterpreting the rules specifying the content of an appeal brief. For example, if the basis for notice of non-compliance is due to the fact that the Figures 3-12 do not contain reference characters, the appellant submits that this is not a valid reason to hold an appeal brief non-compliant under the rules. If the examiner takes issue with the drawings as submitted, the appellant submits that this is an issue which should have been brought up during prosecution and is not a proper basis for finding an appeal brief non-compliant under 37 C.F.R. § 41.37(c)(1)(v).

37 C.F.R. § 41.37 does not require that a drawing include a reference character or that a drawing be amended to include reference characters simply for the sake of submitting an appeal brief. Furthermore, the appellant submits that reference characters in drawings are only necessary when required to properly understand the figure in context with the written description. For example, referring to Figure 4 of the application, the appellant submits that reference characters are not required to understand the figure since it is an example of how certain types of information may be displayed to a user. Figures 1 and 13 on the other hand depict a block diagram and a flow chart and appropriately contain reference characters to facilitate understanding of each element and/or process step.

Accordingly, the appellant submits that it is improper to base a finding of non-compliance on a requirement that is either not applicable to the present situation or a requirement which simply does not exist within the rules and procedures set forth by the U.S. Patent and Trademark Office. Further, this response is being filed pursuant to a discussion with Supervisor Thomas Dixon held on September 29, 2009 instructing the appellant to submit a response highlighting the errors in the Notice of Non-Compliant Appeal Brief. Thus the appellant submits that the finding of a non-compliant appeal brief is in error and should be withdrawn.

### CONCLUSION

Therefore, the appellant respectfully submits that a corrected appeal brief is not required at this time and further that the previously submitted corrected appeal brief is in compliance with each provision of 37 C.F.R. § 41.37.

Respectfully submitted,

Date: 30 SEP 09



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